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FILED
ALAMEDA COUNTY

OCT 24 2013

By

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

CAMBRIDGE UNIVERSITY PRESS, *et al.*,

Defendants.

Case No. RG13672555

~~PROPOSED~~ JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: October 24, 2013

Time: 9:00 a.m.

Dept. 25

Judge: Hon. Ronni MacLaren

Reservation No. R- 1432743

1 Plaintiff, Russell Brimer, and defendant, Cambridge University Press, having
2 agreed through their respective counsel that Judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
7 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
8 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the settlement under Code of Civil Procedure section 664.6.

10
11 **IT IS SO ORDERED.**

12
13
14 Dated: Oct. 24, 2013


JUDGE OF THE SUPERIOR COURT

1

1 Jennifer Henry, State Bar No. 208221
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10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 CAMBRIDGE UNIVERSITY PRESS; *et al.*,

18 Defendants.
19

Case No. RG 13672555

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Russell Brimer ("Brimer"),
4 and defendant, Cambridge University Press ("Cambridge" or "Defendant"), with Brimer and
5 Cambridge each individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Brimer is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Cambridge employs ten or more persons and are persons in the course of doing business for
12 purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
13 § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Brimer alleges that Cambridge sold books with vinyl/PVC covers in California which
16 contained di(2-ethylhexyl)phthalate ("DEHP") in amounts that exceed the statutory threshold of
17 1,000 parts per million without first providing clear and reasonable warnings required by Proposition
18 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause
19 birth defects and other reproductive harm when found in certain concentrations.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are books with vinyl/PVC covers
22 containing DEHP that are imported, manufactured, sold, and/or distributed for sale by Cambridge in
23 California including, but not limited to, the *Cambridge University Press Webster's Essential Mini*
24 *Dictionary*, ISBN 978-0-521-13313-5 (collectively "Products").

25 **1.6 Notice of Violation**

26 On or about August 31, 2012, Brimer served Barnes & Noble, Inc., Barnes & Noble
27 Booksellers, Inc, and certain requisite public enforcement agencies with a "60-Day Notice of
28

1 Violation" ("Notice"), a document that informed the recipients of Brimer's allegation that Barnes &
2 Noble, Inc. and Barnes & Noble Booksellers, Inc, were in violation of Proposition 65 for failing to
3 warn their customers and consumers in California that the Products exposed users to DEHP. On or
4 about January 4, 2013, Brimer served Barnes & Noble, Inc., Barnes & Noble Booksellers, Inc.,
5 Cambridge and certain requisite public enforcement agencies with a "Supplemental 60-Day Notice of
6 Violation" ("Supplemental Notice"), a document that informed the recipients of Brimer's allegation
7 that Barnes & Noble, Inc., Barnes & Noble Booksellers, Inc., Cambridge and its retailers were in
8 violation of Proposition 65 for failing to warn their customers and consumers in California that the
9 Products exposed users to DEHP. The Notice and Supplemental 60-Day Notice of Violation shall be
10 collectively referred to hereinafter as the "Notices".

11 **1.7 Complaint**

12 On March 22, 2013, Brimer filed a complaint in the Superior Court in and for the County of
13 Alameda against Barnes & Noble, Inc., Barnes & Noble Booksellers, Inc., Cambridge and Does 1-
14 150 et al., Case No. RG13672555 ("Complaint") for the alleged violations of Health & Safety Code §
15 25249.6 that are the subject of the Notices.

16 **1.8 No Admission**

17 Cambridge denies the material, factual and legal allegations contained in the Notices and
18 Complaint, and maintains that all of the products that it has manufactured, imported, sold and
19 distributed in California, including the Products, have been, and are, in compliance with all laws.
20 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
21 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
22 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
23 law. This Section shall not, however, diminish or otherwise affect Cambridge's obligations,
24 responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Cambridge as to the allegations in the Complaint, that venue is proper in Alameda
28

1 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
2 Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 30,
5 2013.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 Commencing on the Effective Date and continuing thereafter, Cambridge shall only import,
8 manufacture or cause to be manufactured, and/or distribute for sale in California "Reformulated
9 Products." For purposes of this Consent Judgment, Reformulated Products contain a maximum of
10 1,000 parts per million (0.1%) DEHP content in any accessible component (i.e., any component that
11 may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA
12 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal
13 agencies for the purpose of determining DEHP content in a solid substance. All Products
14 manufactured, caused to be manufactured, or imported by Cambridge prior to the Effective Date shall
15 not be subject to the foregoing reformulation commitment.

16 **3. MONETARY PAYMENTS**

17 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

18 Pursuant to Health & Safety Code § 25249.7(b), Cambridge shall pay \$39,750 in civil
19 penalties. Each civil penalty payment shall be allocated according to Health & Safety Code §
20 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
21 Environmental Health Hazard Assessment ("OEHHA") and twenty-five (25%) of the funds remitted
22 to Brimer. All civil penalty payments shall be delivered to the address provided in section 3.3.1.

23 **3.1.1 Initial Civil Penalty**

24 Within five days of the Effective Date, Cambridge shall make an initial civil penalty
25 payment of \$4,750. Cambridge shall provide its payment in two checks for the following amounts
26 made payable to: (a) "Office of Environmental Health Hazard Assessment" in the amount of
27 \$3,562.50; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,187.50.

28 ///

1 **3.1.2 Final Civil Penalty**

2 On or before December 1, 2013, Cambridge shall make a final civil penalty payment
3 of \$35,000. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil
4 penalty payment shall be waived in its entirety if, no later than November 15, 2013, an officer of
5 Cambridge provides Brimer with written certification that the Products comply with the
6 reformulation standard specified in section 2, and that all of the Products manufactured, distributed,
7 sold and/or offered for sale in California by Cambridge are Reformulated Products, and that
8 Cambridge will continue to manufacture, distribute, sell or offer for sale only Reformulated Products
9 in California. The written certification of reformulation in lieu of the final civil penalty payment
10 required by this section is a material term, and time is of the essence. Unless waived, no later than
11 December 1, 2013, Cambridge shall issue two checks for the following amounts payable to: (a)
12 "OEHHA" in the amount of \$26,250; and (b) "The Chanler Group in Trust for Russell Brimer" in the
13 amount of \$8,750.

14 **3.2 Reimbursement of Brimer's Fees and Costs**

15 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
17 to be resolved after the material terms of the agreement had been settled. Shortly after all other
18 settlement terms had been finalized, Cambridge expressed a desire to resolve the fees and costs. The
19 Parties then attempted to (and did) reach an accord on the compensation due to Brimer and his
20 counsel under general contract principles and the private attorney general doctrine codified at Code
21 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs
22 incurred on appeal, if any. Under these legal principles, on or before the Effective Date, Cambridge
23 shall pay \$29,250 for the fees and costs incurred investigating, litigating, and enforcing this matter,
24 including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the
25 Court's approval of this Consent Judgment in the public interest.

26 **3.3 Payment Procedures**

27 **3.3.1. Payment Address**

28 (a) All payments to Brimer and The Chanler Group shall be delivered to

1 the following address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to section
8 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at
9 the following addresses:

10 For United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street
21 Sacramento, CA 95814

22 With a copy of the checks payable to OEHHA mailed to The Chanler
23 Group at the payment address provided in section 3.3.1(a), as proof of
24 payment to OEHHA.

25 3.3.2 Required Tax Documentation

26 (a) For each penalty payment to OEHHA, a 1099 shall be issued to the
27 Office of Environmental Health Hazard Assessment, 1001 I Street,
28 Sacramento, CA 95814 (EIN: 68-0284486) in the amount of 75% of the total
penalty payment;

(b) For each penalty payment to Brimer, a 1099 shall be issued to "Russell
Brimer," whose address and tax identification number shall be furnished upon
request after this Consent Judgment is fully executed by the Parties.

(c) For the reimbursement of fees and costs pursuant to section 3.3,
Cambridge shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-

3171522), at the address set forth in section 3.3.1(a)..

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Public Release of Proposition 65 Claims

Brimer, acting on his own behalf and in the public interest, releases Cambridge and all of its parents, subsidiaries, affiliated entities that are under common ownership or control, directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited to, all distributors, wholesalers, customers, retailers (including, without limitation, Barnes & Noble, Inc. and Barnes & Noble Booksellers, Inc., their affiliates and each of their respective directors, officers, employees, agents and members), franchisees, cooperative members, licensors, and licensees ("Downstream Releasees"), from all claims for violations of Proposition 65 based on exposure to DEHP from the Products, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from all Products sold, manufactured, caused to be manufactured, or imported by Cambridge prior to the Effective Date, as set forth in the Notices.

4.2 Brimer's Individual Release of Claims

Brimer, in his individual capacity only and *not* in his representative capacity, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products imported, manufactured, sold or distributed for sale by Cambridge and all of its parents, subsidiaries, affiliated entities that are under common ownership or control, directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited to, all distributors, wholesalers, customers, retailers (including, without limitation, Barnes & Noble, Inc. and Barnes & Noble Booksellers, Inc., their affiliates and each of their respective directors, officers, employees, agents and members), franchisees, cooperative members, licensors, and licensees ("Downstream Releasees"), from all claims for violations of Proposition 65 based on exposure to DEHP from the Products, as set forth

1 in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to DEHP from all Products sold, manufactured, caused to
3 be manufactured, or imported by Cambridge prior to the Effective Date..

4 **4.3 Cambridge's Release of Brimer**

5 Cambridge on behalf of itself and on behalf of its past and current agents, representatives,
6 attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and his
7 attorneys and other representatives, for any and all actions taken or statements made (or those that
8 could have been taken or made) by Brimer and his attorneys and other representatives, whether in
9 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
10 matter, or with respect to the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
14 has been fully executed by all Parties.

15 **6. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
17 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
18 adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
22 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Cambridge
23 may provide written notice to Brimer of any asserted change in the law, and shall have no further
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
25 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Cambridge from any
26 obligation to comply with any pertinent state or federal toxics control laws.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Cambridge:

6 William Bowes
7 General Counsel
8 Cambridge University Press
9 University Printing House
 Shaftesbury Road
 Cambridge CB2 8RU

10 with a copy to:

11 William F. Tarantino, Esq.
12 Morrison & Foerster LLP
 425 Market Street
 San Francisco, CA 94105

13
14 For Brimer:

15 The Chanler Group
16 Attn: Proposition 65 Coordinator
 2560 Ninth Street
 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 Any Party may, from time to time, specify in writing to the other Party a change of address to which
19 all notices and other communications shall be sent.

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable
22 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
23 taken together, shall constitute one and the same document.

24 **10. POST EXECUTION ACTIVITIES**

25 Brimer agrees to comply with the reporting form requirements referenced in Health & Safety
26 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
27 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
28 of obtaining such approval, Brimer and Cambridge agree to mutually employ their best efforts, and

1 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
2 judicial approval of the settlement in a timely manner. For purposes of this Section, "best efforts"
3 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
4 and supporting the motion for judicial approval.

5 **11. MODIFICATION**

6 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
7 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
8 application of any Party and the entry of a modified consent judgment by the Court.

9 **12. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment and have read, understood,
11 and agree to all of the terms and conditions contained herein.

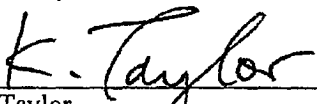
12 **AGREED TO:**

AGREED TO:

13
14 Date: September 3, 2013

Date: 3 September 2013

15
16 By: 
RUSSELL BRIMER

By: 
Kevin Taylor
Director of Syndicate Affairs
CAMBRIDGE UNIVERSITY PRESS